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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/836,995	04/18/2001	James F. Lee	0506-4021	7656

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345 Park Avenue  
New York, NY 10154-0053

EXAMINER
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COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 02/24/2004

*18*

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/836,995

Applicant(s)

LEE, JAMES F.

Examiner

Josiah Cocks

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09/18

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on RCE filed 12/23/03.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13, 18-20 and 22-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-7, 10, 11, 18-20, 23, 24, 26 and 27 is/are rejected.
- 7) ☒ Claim(s) 3, 8, 9, 12, 13, 22 and 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/23/03 has been entered.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by *George* (US # 4,305,375).

*George* discloses in Figures 1-4 a fireplace grate as described in applicant's claims 26 and 27 including a plurality of grate members (each end grate member 12), each grate member having a first portion extending in a first plane (see Fig. 2) and a second portion extending below the first plate (see 17, 19, and 21). The examiner considers that the U-shaped members (17) and the leg portions (19 and 21) are attached to the end grate members (12) and form portions of the

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grate members. A plurality of cross members (13 and 22) link the grate members and form a platform and cavity. Cross member (22) extends along an interior of the cavity.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 4, 7, 10, 11, 18, 19, 20, 23, and 24 rejected under 35 U.S.C. 103(a) as being unpatentable over *George* (US # 4,305,375) in view of *Gerrard* (US # 5,435,295)

*George* discloses in Figures 1-4 a fireplace grate similar to that described in applicant's claims 1, 2, 4, 7, 10, 11, 18, 19, 20, 23, and 24 including frame with a plurality of non-moveable grate members (12) and a plurality of non-moveable cross members (13 and 22). The grate members and cross members define a platform (see Fig. 2) and a compartment that is formed by U-shaped members (17) (which the examiner also considers grate members) that extend below the platform to form the compartment. The examiner considers that the portions of the grate members (12) and cross members (13) extending over the compartment form a cage member as recited in claim 2.

Through *George* does not disclose his grate used with a firelog or starter material placed in the compartment, the examiner considers that this compartment is operative to hold a firelog or starter material and would prevent direct contact between a firelog and wood or ceramic logs placed on top of the platform. *Gerrard* is cited to show that it is well understood in the art that

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firelogs/starter material (34) may be used with fireplace grate assemblies. *Gerrard* also shows that ceramic logs (31, 32, 33) may be placed above the firelogs/starter material (34) (see Fig. 4). Therefore, a person of ordinary skill in the art would recognize that, as the grate of *George* includes the grate structure of applicant's claims, this grate would be capable of supporting firelogs and ceramic logs as firelogs well known in the art to burn efficiently, safely and cleanly (see *Gerrard*, col. 1, lines 15-19) and ceramic logs are well known for simulating wood burning logs (see col. 3, lines 18-22).

In regard to claim 7, to have included a plurality of compartments would be simply a matter of duplicating the known compartment of *George* and is not considered to be patentably distinct. (See MPEP § 2144.04 (VI)(B)).

In regard to claim 10, to have selected at least four non-moveable grate members instead of the three shown in *George* is regarded as simply a matter of design choice dependent upon the desired size of the grate and is not considered to be patentably distinct.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over *George* in view of *Gerrard* as applied to claim 2 above, and further in view of *Thompson* (US # 4,360,001).

*George* in view of *Gerrard* teach all of the limitations of claim 5 except that the grate members include a V-shaped portion for supporting the firelog.

*Thompson* teaches a log support (21) for a fireplace grate wherein the log support is V-shaped (see Fig. 4).

Therefore, in regard to claim 5, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the U-shaped firelog support of *George* to

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incorporate the V-shaped support of *Thompson* for the desirable purpose of forming a fuel support which creates a desirable draft space for the ignition and maintenance of a log fire (see *Thompson*, col. 1 line 68 through col. 2, line 2).

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over *George* in view of *Gerrard* as applied to claim 1 above, and further in view of *Dotson et al.* (US # 4,692,168).

*George* in view of *Gerrard* teach all the limitations of claim 6 except possibly that the firelog is a gel log.

*Dotson et al.* teaches that it is well known in the art that a starting log/firelog for a fireplace may comprise gelled fuel (see col. 3, lines 24-37). The examiner regards a firelog composed of a gelled fuel to constitute a "gel log" as claimed.

Therefore, in regard to claim 6, it would have been obvious to a person of ordinary skill in the art at the time the invention was made that a firelog used in the fireplace grate of *George* would be formed from a gelled fuel as taught by *Dotson et al.* as gelled fuels provide increased heat, increased luminosity and improved safety (see *Dotson et al.*, col. 1, lines 47-49).

#### ***Allowable Subject Matter***

8. Claims 3, 8, 9, 12, 13, 22, and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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***Response to Arguments***

9. Applicant's arguments with respect to claims 1, 2, 4-7, 10, 11, 18-20, 23, 24, 26 and 27 have been considered but are moot in view of the new ground(s) of rejection.


***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (703) 308-1935. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc  
February 22, 2004

  
JOSIAH COCKS  
PATENT EXAMINER  
ART UNIT 3749